

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**NEIL GILMOUR, III, TRUSTEE §  
FOR THE GRANTOR TRUSTS OF §  
VICTORY PARENT COMPANY, §  
LLC, VICTORY MEDICAL §  
CENTER CRAIG RANCH, LP, §  
VICTORY MEDICAL CENTER §  
LANDMARK, LP, VICTORY §  
MEDICAL CENTER MID-CITIES, §  
LP, VICTORY MEDICAL CENTER §  
PLANO, LP, VICTORY MEDICAL §  
CENTER SOUTHCROSS, LP, §  
VICTORY SURGICAL HOSPITAL §  
EAST HOUSTON, LP, AND §  
VICTORY MEDICAL CENTER §  
BEAUMONT, LP, §**

**Plaintiffs,**

**v.**

**AETNA HEALTH INC., AETNA §  
HEALTH INSURANCE COMPANY, §  
AND AETNA LIFE INSURANCE §  
COMPANY, §**

**Defendants. §**

**CIVIL ACTION NO. 5:17-cv-00510-FB**

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**JOINT ADVISORY REGARDING PENDING MOTIONS**

**[Dkt. Nos. 98, 103, 108, 123, 146]**

C926 2:17-cv-00210-FB-E2C Doc1169-1 Filed 07/10/18 Page 1 of 1

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Plaintiff Neil Gilmour, III, (“Plaintiff”), Trustee for the Grantor Trusts of Victory Parent Company, LLC, Victory Medical Center Craig Ranch, LP, Victory Medical Center Landmark, LP, Victory Medical Center Mid-Cities, LP, Victory Medical Center Plano, LP, Victory Medical Center Southcross, LP, Victory Surgical Hospital East

Houston, LP, and Victory Medical Center Beaumont, LP (“Victory”), and Defendants Aetna Health Inc., Aetna Health Insurance Company, and Aetna Life Insurance Company (“Aetna”) (together, the “Parties”) file this Joint Advisory regarding the following motions: Defendants’ Opposed Motion to Admit Former Trial Testimony of Non-Party Witness Andrew Hillman and/or for an Adverse Inference [#98], Defendants’ Opposed Motion to Exclude the Opinions of Plaintiff’s Damages Expert, Rodney Sowards [#103], Defendants’ Motion to Compel the Production of Documents and Brief in Support [#108], Defendants’ Motion for Sanctions and Supporting Brief [#123], and Victory’s Opposed Motion to Compel Discovery [#146].

1. On January 6, 2020, counsel for the Parties conferred by telephone about the issues raised in the motions in an attempt to resolve or narrow the issues in dispute.

2. The Parties were not able to resolve Aetna’s Opposed Motion to Admit Former Trial Testimony of Non-Party Witness Andrew Hillman and/or for an Adverse Inference. Aetna still requests that the Court enter an Order: (i) finding Mr. Hillman’s trial testimony in the *Beauchamp*<sup>1</sup> case is admissible in this proceeding, and/or (ii) finding that Aetna is entitled to an adverse inference against Plaintiffs based upon Mr. Hillman’s invocation of the Fifth Amendment privilege in a civil proceeding. Plaintiff C926 2:15-cr-00210-EB-E2C Document 125 Filed 01/06/20 Page 5 of 9 remains opposed based on the grounds set forth in his response.

3. Additionally, the Parties were not able to resolve Aetna’s request that the Court (i) exclude the expert opinions of Rodney Sowards, and (ii) if necessary, separately

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<sup>1</sup> *United States v. Beauchamp, et al.*, Case No. 3:16-cr-00516-JJZ (N.D. Tex. Filed Nov. 16, 2016).

exclude the enhanced damages model contained in Sowards' Rebuttal Expert Report. Plaintiff remains opposed based on the grounds set forth in his response.

4. The Parties and counsel for non-party Robert Helms conferred and were not able to resolve Aetna's Motion for Sanctions.<sup>2</sup> Aetna still requests that the Court enter appropriate sanctions against Plaintiff and Mr. Helms, including ordering Plaintiff and Mr. Helms to pay all of Aetna's attorneys' fees and costs in this case, and to strike Plaintiff's pleadings. Plaintiff remains opposed based on the grounds set forth in his response and requests that the Court order Aetna to pay his attorneys' fees and costs associated with responding to the motion. Mr. Helms remains opposed.

5. As to Aetna's Motion to Compel the Production of Documents, Plaintiff subsequently produced the self-pay price list and the documents listed in Plaintiff's Amended Privilege Log. As such, those document requests are moot. The Parties were not able to resolve Aetna's request for implant vendor pricing information, and Plaintiff remains opposed. Additionally, the Parties were not able to resolve fully Aetna's request for medical records for all of the medical claims at issue. According to counsel, Plaintiff intends to produce some medical records by January 7, 2020, at the latest. Aetna, however, still requests complete medical records for all patient encounters at issue. Case 2:11-cv-00210-EB-E2C Document 125 Filed 01/06/20 Page 3 of 9 Excluding the medical records Plaintiff has agreed to produce by January 7, Plaintiff remains opposed. Aetna's request for attorneys' fees and costs related to this motion remains unresolved because Plaintiff remains opposed.

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<sup>2</sup> On January 6, 2020, counsel for Aetna and counsel for Mr. Helms conferred by telephone about the issues raised in Aetna's Motion for Sanctions.

6. The Parties were not able to resolve Victory's Motion to Compel Discovery. Victory still seeks the production of information exchanged between Aetna and the government concerning Victory since January 1, 2017. Aetna remains opposed based on the grounds set forth in its response, including the confidential nature of grand jury proceedings.

Respectfully submitted,

By: /s/ Jennifer Ecklund (with permission)

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C926 2:13-cv-00210-EB-E2C Document 125 Filed 07/09/13 Page 2 of 9

### **CERTIFICATE OF SERVICE**

I hereby certify that on January 6, 2020, I electronically filed the foregoing document with the Clerk of Court for the U.S. District Court, Western District of Texas, using the CM/ECF system. The electronic case filing system sent a “Notice of Electronic Filing” to the following attorneys of record who are known “Filing Users:”

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